

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs April 17, 2007

STATE OF TENNESSEE v. JASON R. MATLOCK

**Direct Appeal from the Circuit Court for Rutherford County
No. F-45313 James K. Clayton, Jr., Judge**

No. M2006-01141-CCA-R3-CD - Filed May 9, 2007

In 1998, the Defendant, Jason R. Matlock, pled guilty to attempted rape of a child, and he was sentenced to ten years as a Range I offender and to community supervision for life. The Defendant was released from prison in 2006, and he subsequently filed a petition alleging that, since his release, he has been wrongfully placed in a pilot program that has more stringent requirements than community supervision for life. The trial court granted a temporary stay but later denied the Defendant's petition. It is from that denial that the Defendant now appeals. Concluding there exists no avenue for appeal to this Court, we dismiss the Defendant's appeal.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES and JOHN EVERETT WILLIAMS, JJ., joined.

Tony L. Maples, Murfreesboro, Tennessee, for the appellant, Jason R. Matlock.

Robert E. Cooper, Jr., Attorney General and Reporter; Preston Shipp, Assistant Attorney General; William Whitesell, District Attorney General; Loral A. Nutt, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Facts

The Defendant was indicted for rape of a child, and, on December 7, 1998, he pled guilty to attempted rape of a child. The trial court sentenced him to ten years in prison as a Range I offender and ordered that he provide a DNA specimen, register as a sex offender, complete sex offender treatment, and be subject to community supervision for life. The Defendant was released from prison on February 4, 2006.

On March 7, 2006, the Defendant filed a petition requesting an injunction. In the petition, the Defendant asserted that he had been placed in a pilot program that had more stringent and expensive

requirements than standard community supervision. He further asserted that, because he was not released on probation or parole, he did not meet the requirements of persons eligible for the pilot program. He said that, as part of the program, he was required to wear an ankle monitoring system, keep strict curfews, and submit to a \$700.00 psychological examination. The Defendant sought a temporary stay of the psychological examination pending a hearing on his petition. The State filed a motion to dismiss, alleging that the Defendant did not have standing to contest the judgment entered in 1998. That judgment ordered that the Defendant be subject to community supervision for life. He had not been charged with violating his supervision and he had not yet been on community supervision for fifteen years, either one of which would give the Defendant a basis to challenge his supervision. The trial court granted the Defendant's request for a stay of the psychological exam pending a hearing.

At a hearing on the Defendant's petition, the State told the trial court that its position was that the Defendant did not have a legal basis to file his petition. The Defendant argued that the punishment being inflicted upon him was a violation of the *ex post facto* clause of the Tennessee Constitution. The Defendant told the court that he was being made to participate in a pilot program pursuant to Tennessee Code Annotated section 40-39-301. That statute states that defendants convicted after July 1, 2004, released on probation after July 1, 2004, or released on parole after July 1, 2004, may be in the pilot program. He asserted that, because he served his entire sentence and was not released on probation or parole, he could not be made to participate in the program. Further, while he was ordered in the original judgment to be subject to community supervision for life, that order did not make him properly subject to the provisions of 40-39-301.

The Defendant told the court that the pilot program would require him to wear a monitoring device, go to more classes, have stricter curfew violations, and more employment restrictions. The Defendant asserted that, because the pilot program is more onerous than the community supervision that was in place when he pled guilty, it is a violation of the *ex post facto* clause.

The State countered that the community supervision statute in effect at the time the Defendant pled guilty required that a person on community supervision for life be under the jurisdiction, supervision, and control of the board of probation and parole in the same manner as a person under parole supervision. Further, the board is authorized on an individual basis to establish such conditions of community supervision as are necessary to protect others from the individual committing a new sex offense as well as promoting the individual's rehabilitation. The State asserted that the Defendant was aware of this statute at the time that he pled guilty, and he never contested his guilty plea.

Based upon these arguments, the trial court found that the Defendant did not have standing to challenge his supervision.

The Defendant made an offer of proof, calling John Parker to testify. Parker testified that he is employed with the State of Tennessee Board of Probation and Parole. He said that when the Defendant was released from prison he signed a certificate for community supervision for life. The

Defendant's sentence had expired, but Parker considered community supervision to be parole. Parker agreed that there were some people who were released before July 1, 2004, who were subject to GPS ankle monitoring, but they were on probation or parole. Parker testified that GPS monitoring is the only difference between the pilot program and other community supervision for life.

On cross-examination, Parker testified that there are two types of sex offenders under the sex offender registry, violent offenders and regular sex offenders. Not everyone is ordered to community supervision for life, only violent offenders, those who have been convicted of rape of a child, aggravated rape, rape, aggravated sexual battery, or the attempt of any of those four crimes. He said that some, but not all, violent sex offenders can fall under community supervision for life. Further, Parker said that if a defendant is convicted of a sex offense and is on probation, the Defendant is monitored. Parker said that any defendant released on community supervision for life is treated as if they was on parole. He said, as such, they fall under the pilot GPS program, and they also still have to register with the sex offender registry for life. Parker testified that he is not treating the Defendant differently than others in his situation.

On redirect examination, Parker testified that the Defendant would have to wear his GPS monitor as long as the pilot program is enacted, and then it would be up to the Legislature to determine whether the program would continue. The monitoring system added fifty dollars each month to the cost of supervision.

The Defendant appeals the order of the court finding that he did not have standing to contest his supervision.

II. Analysis

The State first contends that the Defendant does not have a right to appeal pursuant to Tennessee Rule of Appellate Procedure 3(b). If we conclude that the Defendant has a right to appeal, we must then address his contentions: (1) that he had standing to challenge the constitutionality of his community supervision for life; and (2) that his community supervision violated his constitutional rights.

We must first address the State's contention that Tennessee Rule of Appellate Procedure 3(b) does not provide the Defendant an avenue for appeal. Rule 3(b) states:

(b) Availability of Appeal as of Right by Defendant in Criminal Actions. In criminal actions an appeal as of right by a defendant lies from any judgment of conviction entered by a trial court from which an appeal lies to the Supreme Court or Court of Criminal Appeals: (1) on a plea of not guilty; and (2) on a plea of guilty or nolo contendere, if the defendant entered into a plea agreement but explicitly reserved the right to appeal a certified question of law dispositive of the case pursuant to and in compliance with the requirements of Rule 37(b)(2)(i) or (iv) of the Tennessee Rules of Criminal Procedure, or if the defendant seeks review of the sentence and there was

no plea agreement concerning the sentence, or if the issues presented for review were not waived as a matter of law by the plea of guilty or nolo contendere and if such issues are apparent from the record of the proceedings already had. The defendant may also appeal as of right from an order denying or revoking probation, and from a final judgment in a criminal contempt, habeas corpus, extradition, or post-conviction proceeding.

In State v. McCary, 815 S.W.2d 220 (Tenn. Crim. App. 1991), this Court addressed whether Rule 3(b) provided a defendant a right to appeal an order dismissing his request to have his record expunged. In that case, the defendant pled guilty to aggravated rape and two counts of aggravated sexual battery were dismissed. Id. 221. The defendant then moved to expunge his record of the two dismissed counts of aggravated sexual battery, and the trial court dismissed his motion. Id. McCary appealed, and this Court determined that, although issues of expungement were not included in the list of issues appealable as of right, “This is apparently an oversight in the drafting of these rules since the statute establishing jurisdiction in this Court apparently anticipates that all final judgments arising out of criminal cases are appealable.” Id. (referring to T.C.A. § 16-5-108, granting jurisdiction over final judgments arising out of criminal cases). Because of this perceived oversight, our Court held that a defendant could appeal the denial of an order of expungement under Rule 3(b).

McCary was not appealed to the Tennessee Supreme Court. The Supreme Court, however, addressed the issue, and McCary, in State v. Adler, 92 S.W.3d 397, 398 (Tenn. 2002). The issue in Adler was whether, pursuant to Tennessee Rule of Appellate Procedure 3(c), the State could appeal an order of expungement. In Adler, the Court first noted that the “language of Rule 3(b) is similar to Rule 3(c) in that it very clearly enumerates the specific circumstances in which a defendant is authorized to appeal as of right in a criminal action.” Id. at 400. The Court discussed McCary, stating that “[n]one of the enumerated instances in Rule 3(b) allow a defendant to appeal as of right a trial court’s denial of an order of expungement.” Id.

Addressing whether either the State or the defendant could appeal such an order, the Court stated:

As this Court stated in Hill v. City of Germantown, 31 S.W.3d 234, 237-38 (Tenn. 2000), where a statute is without contradiction or ambiguity, there is no need to force its interpretation or construction” Additionally, when interpreting statutes, this Court has routinely followed the Latin maxim of *expressio unius est exclusio alterius*, meaning the expression of one thing implies the exclusion of all things not mentioned.” Limbaugh v. Coffee Medical Center, 59 S.W.3d 73, 84 (Tenn. 2001); see also D & E Const. Co. v. Robert J. Denley Co., 38 S.W.3d 513, 519 (Tenn. 2001). This Court has also determined that such rules of statutory construction are applicable in construing rules governing the practice and procedure of the court. State v. Peele, 58 S.W.3d 701, 704 (Tenn. 2001) (citing State v. Brewer, 989 S.W.2d 349, 355 n.4 (Tenn. Crim. App. 1997)).

Adler, 92 S.W.3d at 400.

The Court then applied those rules to the issue it was addressing and stated that:

[I]t is clear that Rule 3(c) grants the State the authority to appeal as of right only in a limited number of circumstances. The plain language of the rule enumerates the six instances in which the State may appeal as of right and states that they are the only instances that give the State such a right. Tenn. R. App. P. 3(c). Moreover, by listing the specific circumstances that give the State the right of appeal under Rule 3(c), the rule “excludes other [circumstances] that are not mentioned.” Peele, 58 S.W.3d at 704. Additionally, noting that in the past this Court has examined Advisory Committee Comments to aid in its interpretation of court rules, see Gann v. Burton, 511 S.W.2d 244, 246 (Tenn. 1974), we find it revealing that the Advisory Commission Comment to Rule 3(c) states that “the rule provides that appeals as of right lie *only* in those circumstances specified in the subdivision.” (Emphasis added).

Adler, 92 S.W.3d at 400. The Adler Court “disagree[d] with the language in McCary suggesting that it was an oversight on the part of the drafters of Rule 3 in failing to provide for the appeal of an unfavorable ruling concerning an expungement order.” Id. The Court held, “Because the plain and unambiguous language of Rules 3(b) and (c) . . . neither the State nor a criminal defendant has the authority to appeal as of right an unfavorable ruling concerning an expungement order under Rule 3.”¹

Using this interpretation of Rule 3(b) as a guide, we conclude that Rule 3(b) does not provide an avenue for appealing the trial court’s denial of the Defendant’s motion requesting an injunction from performing the requirements of his community supervision sentence. As such, we dismiss this appeal.

III. Conclusion

In accordance with the foregoing reasoning and authorities, we dismiss the Defendant’s appeal.

ROBERT W. WEDEMEYER, JUDGE

¹We note that the Alder Court ultimately reviewed the issue presented by the State, permitting the appeal by a common law writ of certiorari. Adler, 92 S.W.3d at 401. It held that a writ of certiorari, which is limited to cases where the trial court acted without legal authority, because the State contended that the trial court expunged a record to which the expungement statute was inapplicable. Id. Because the Court determined that the appeal involved an allegation that the trial court acted without legal authority and because “there is no other plain, speedy, or adequate remedy,” the Court addressed the issue. Id.